

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Seth Muth,

Civil No. 08-6513 (DWF/FLN)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Dwight L. Fondren, Warden,
Sandstone F.C.I.,

Respondent.

Katherine Menendez, Assistant Federal Defender, Office of the Federal Defender,
counsel for Petitioner.

Ana H. Voss, and Gregory G. Brooker, Assistant United States Attorneys, United States
Attorney's Office, counsel for Defendant.

This matter is before the Court upon Petitioner Seth Muth's ("Petitioner")
objections to Magistrate Judge Franklin L. Noel's Report and Recommendation filed
July 9, 2009, recommending that the Petitioner's Petition for Writ of Habeas Corpus be
transferred to United States District Judge Jack D. Shanstrom, United States District
Court - District of Montana and that the Government's Motion to Dismiss be denied.

The Court has conducted a *de novo* review of the record, including a review of the
arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local
Rule 72.2(b). The factual background for the above-entitled matter is clearly and

precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Seth Muth does not object to the recommendation that his Petition for Writ of Habeas Corpus be transferred to the District of Montana and considered by the judge who originally handled his criminal case, the Honorable Jack D. Shanstrom. Further, Petitioner does not object to the recommendation that Respondent's Motion to Dismiss should be denied given that the matter shall be transferred and decided by the United States District Court - District of Montana.

2. Petitioner Seth Muth's objections (Doc. No. 26), as they relate to the analysis of the Report and Recommendation in evaluating the proper procedural status of the case, are **DENIED AS MOOT** in light of the transfer of the case to the United States District Court - District of Montana.

3. Magistrate Judge Franklin L. Noel's Report and Recommendation filed July 9, 2009 (Doc. No. 23), is **ADOPTED**.

4. Petitioner's Petition for Writ of Habeas Corpus is transferred to United States District Judge Jack D. Shanstrom, United States District Court - District of Montana. Rule 4 of the Rules Governing § 2255 proceedings provides that if Judge

Shanstrom is not available, the Clerk must forward the motion to a judge under the court's assignment procedure.

5. The Government's Motion to Dismiss (Doc. No. 9) is **DENIED**.

Dated: September 2, 2009

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge